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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HIROYUKI NISHII
and HIROAKI MASHIKO

Appeal 2009-015217
Application 09/809,273
Technology Center 1700

Decided: June 29, 2010

Before MICHAEL P. COLAIANNI, BRADLEY R. GARRIS, and
BEVERLY A. FRANKLIN, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 4, 10, 12, 13, 15, and 17. We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

Appellants claim a member for an electroluminescent device comprising a container which is made of a porous material and a non-porous

material and which contains a removing agent capable of removing a gaseous component, "wherein said container is made of two flat sheets" (claim 4).

Representative claim 4 reads as follows:

4. A member for an electroluminescent device comprising a container which is made of a porous material and a non-porous material and a removing agent capable of removing a prescribed gaseous component, the removing agent being contained in said container,

wherein said container is made of two flat sheets joined together only at their peripheries, one of said two flat sheets being a porous sheet, and the other being a non-porous sheet;

said porous sheet is an air-permeable laminate sheet comprising a porous layer and a reinforcing layer; and

said reinforcing layer is nonwoven fabric.

The Examiner rejects claims 4 and 13 under 35 U.S.C. § 102(b) as being anticipated by Wakamatsu (U.S. Patent 4,667,814, issued May 26, 1987).

The Examiner rejects the remaining claims on appeal under 35 U.S.C. § 103(a) as being unpatentable over Wakamatsu alone or in view of Biebuyck (U.S. Patent 5,734,225, issued Mar. 31, 1998).

Each of these rejections is premised on the Examiner's finding that Wakamatsu's oxygen absorbent packet satisfies the independent claim limitation "wherein said container is made of two flats sheet" (claims 4, 10) (Ans. 3-6).

The sole argument advanced against these rejections relates to this finding by the Examiner. According to Appellants:

Wakamatsu discloses reference 2 as being a blister *molded* cup-like plastic container. *See* col. 2, line 30 (emphasis added). The, [sic] molded container 2 of Wakamatsu is clearly not a flat sheet and thus, the container 2 of Wakamatsu is different from the non-porous flat sheet of claim 4.
(Br. 9).

This argument is unpersuasive.

As correctly explained by the Examiner, "[c]laim 4 does not expressly require that the sheets are actually flat in the final product, but rather requires that the sheets are *made of* two flat sheets" (Ans. ¶ bridging 6-7). Significantly, the Examiner's interpretation of representative claim 4 has not been expressly contested by Appellants with reasonable specificity in the appeal record. Based on this uncontested claim interpretation, we agree with the Examiner that the independent claim limitation "wherein said container is made of two flat sheets" fails to distinguish over the blister-molded cup-like plastic container 2 of Wakamatsu's oxygen absorbent packet (Figs. 1-2, col. 2, ll. 26-30).

We also agree with the Examiner that the above discussed interpretation of claim 4 is supported by Figs. 1, 2, and 6 of Appellants' drawing (Ans. 3-5, ¶ bridging 6-7, 9). Appellants' argument that "[t]he Examiner misapprehends the figures" (Br. 10) is unconvincing because it is inconsistent with the member shapes depicted in Appellants' drawing figures. For example, as pointed out by the Examiner, portion 11 of Appellants' Figure 1 is depicted as a shaped structure (Ans. ¶ bridging 8-9). The Examiner's position is further supported by non-porous container 13 of Figures 4 and 5 (Spec. 8, last full para.) which corresponds to non-porous

container 2 of Wakamatsu's oxygen absorbent packet. We note that Appellants refer to Figures 4 and 5 in summarizing the subject matter defined by independent claims 4 and 10 (Br. 6).

Finally, in an apparent attempt to support their argument, Appellants refer to their Specification disclosure of methods for making the porous sheet of their container (Br. ¶¶ bridging 10-11). However, Appellants' argument is not directed to the porous sheet of their claimed container. Rather, the argument concerns whether the non-porous sheet of the claim 4 container is satisfied by non-porous container 2 of Wakamatsu's oxygen absorbent packet. As a consequence, Appellants' reference to the Specification disclosure does not support the sole argument advanced in this appeal.

For the reasons set forth above and for the reasons well stated by the Examiner in the Answer, we sustain each of the § 102 and § 103 rejections advanced in this appeal.

The decision of the Examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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